

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO. 296 OF 1995

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

Mehta Pradipkumar Mansukhlal
versus
Shri Mehta Panachand Thakarshi Jain Vidhyarthi Bhavan
Trust

Appearance:

Mr.S.M.Shah for petitioner
None present for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 30/12/1999

C.A.V. JUDGMENT

#. Feeling aggrieved of the judgment and order of the Court of Extra assistant Judge below Ex.1 in Civil Misc.

Application No. 37/91, holding that the application is not maintainable under the Bombay Public Trusts Act, the petitioner prefers this revision application.

#. The facts of the case, in brief, are that an application has been filed by the petitioner under section 47 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Act, 1950) for appointment of new trustees of the respondent No.1 trust namely Shri Mehta Panchaand Thakarshi Jain Vidhyarthi Bhavan Trust after removing the respondents No.2 to 10 who are the trustees of the said trust. It is the case of the petitioner that he was nominated as a trustee by opponent No.5 Mehta Sudhir Mansukhlal. However, other trustees have not accepted the change. He is the beneficiary in the trust. The trust was established by the founder for the purpose of imparting education to students belonging to Jain Shwetamber community. He has given out several instances to show how that the trustees, respondents No.2 to 10 have committed breach of interest and have also committed irregularities and lapses. Those alleged irregularities and lapses are as follows:

- (a) Though the trust is for the benefit of only Jain Swetamber Community, admission is given to students of other community.
- (b) A hostel run by the trust has been closed down for no apparent reasons.
- (c) Members of the committees of the trust are appointed from persons belonging to communities other than Jain Swetamber Murtipujak Dasha Shrimali Community.
- (d) Management of the trust is done in a manner which causes loss of income to the trust.
- (e) Loans are given to students contrary to objects of the trust.

#. So in the case of the petitioner, as present trustees have violated the object of trust and accordingly they have become unfit to continue as trustees. In para-6 of the application, the petitioner stated that as the trustees have become unfit they are not the trustees and hence vacancies have arisen in the trust and therefore new trustees are required to be appointed. Prayer has been made in the application, which reads as under:

"In view of the above facts, trustees of opponent

No.1 trust, are disqualified to continue as trustees meaning thereby that they are unfit. Accordingly it is prayed that the new trustees be appointed keeping in mind objects of the trust and the trust deed."

#. A preliminary issue has been framed in this matter by the court below, which reads as under:

Whether this application is maintainable in view of the fact that relief sought are substantially for removal of trustees which are governed by sec. 50 and sec. 51 of the Bombay Public Trust Act and permission of the Charity Commissioner is not obtained ?

#. Under the impugned order, the court below has decided the preliminary issue against the petitioner holding that the matter substantially relates to the removal of the trustees and appointment of new trustees. This matter in its opinion squarely falls under section 50 of the Act, 1950. Under this Section the matter could have been filed with the prior permission of the Charity Commissioner which has not been taken by the petitioner and the same was held to be not maintainable and accordingly it was dismissed.

#. Learned counsel for the petitioner contended that the learned trial court has committed serious error of jurisdiction in holding that the application is not maintainable. Referring to the provisions of section 47, learned counsel for the petitioner contended that the court has to decide whether the trustees have become unfit or not and where it is decided in favour of the petitioner certainly the court has to go in the matter and pass appropriate order. It is not a case where without undertaking this exercise, the application could have been dismissed only on the ground of maintainability. It has next been contended that the court below has committed an error of jurisdiction in treating this application which has been filed under section 47 of the Act, 1950 as under section 50. the substance of the matter has to be considered and this matter clearly falls under section 47 of the Act, 1950. Lastly, it is contended that the court below has travelled beyond the scope of preliminary issue raised and as a result of which it has committed material irregularity in exercising its jurisdiction in rejecting the application.

#. Nobody is present on behalf of the respondent to

oppose this civil revision application.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. To appreciate the contentions raised by the learned counsel for the petitioner, the provisions of the Act, 1950 and particularly Section 47, 50 and 50A have been gone into.

##. The learned counsel for the petitioner has placed much emphasis on clause (g) of Section 47 of the Act, 1950. Under this clause of this section any person interested in public trust or the Charity Commissioner may apply to the Court for the appointment of a new trustee, when a trustee of such trust -- becomes in the opinion of the Court unfit or physically incapable to act as a trustee or accepts a position which is inconsistent with the trust. From this clause, I find that under Section 47 of the Act the court has power to act, adjudicate and decide on the question of fitness of a trustee or his physical incapacity to act as a trustee or whether he has the accepted position which is inconsistent with the trust. Subsection 2 of Section 47 of the Act gives out the grounds of non maintainability of application under sub-section 1 of Section 47 by a person interested in the public trust. Section 47 of the Act is attracted only in case where the trustee, who on account of any of the reasons mentioned in clauses (a) to (h) of sub-section 1 thereof is not fit or who administers the trust as a sole trustee or where by vacation of the office by one or more trustees on account of any of the said reasons, the minimum number of trustees required by the instrument, scheme, order or decree of the court or usage or custom of the trust for the administration of the trust is reduced. Sub-section 2 of Section 47 of the Act, 1950, further provides that until the expiry of period of three months from the date on which the trustee is not so fit or available to administer the trust and if a new trustee has been appointed in the said office during the said period in accordance with the instrument, scheme, order or decree of the court, or custom or usage of the trust. It is not the case of petitioner that there is only sole trustee in the trust. It is also not the case of petitioner that vacation of the office of one or more trustee on account of any of the reasons as enumerated in clause (a) to (g) of sub-section 1 of Section 47 of the Act, 1950, the minimum number of trustees required by the instrument, scheme, order or decree of the court, usage or custom of the trust for the administration of trust is reduced. If

we go by the scheme of Section 50 and 51 of the Act, 1950, I find that lightly interference in the administration of trust by the trustees or by a person interested in the trust needs not to be made. Trustees are free to administer the trust. It is not unknown that for the personal reasons the persons interested in the trust are creating manifold troubles, problems and hurdles in the way of the trustees to administer the trust. To have a check, balance and possible disturbances in the administration of trust by the trustees, sufficient protection has been provided to the trust which is clearly borne out by Section 50 and 51 of the Act, 1950. But at the same time where there is only a sole trustee in the trust or where for the reasons as set out in Section 47 of the Act, 1950, minimum number of trustees required under the instrument, scheme, etc. is reduced, a speedy remedy is provided so that the trust may not suffer for want of trustee or requisite number of trustees. For non availability of trustee by requisite number of trustees its administration is not possible and if the matter has to go by the scheme under Section 50, 51, and 50A of the Act, 1950, it will take a long time and during this period, the trust will not function. Most of these trusts are constituted for charitable purposes and for the purposes as provided under the Act, 1950. The charitable purpose includes relief from poverty or distress, education, medical relief, advancement of any other object of general public utility but does not include a purpose which relates exclusively to sports or exclusively to religious teaching or worship. Non functioning of trust for the reason of unfitness of the sole trustee or non availability of minimum number of trustees certainly adversely affects the very purpose and object of the trust. The trustees are not only the persons concerned with the trust but the concerned persons are beneficiaries thereof. The trust is ultimately for the benefit of public and to fulfil that purpose and object the trustees are there to administer the same. To avoid this non availability of the benefits to the beneficiaries of the trust in a particular situation, i.e. where the sole trustee has become unfit to administer a trust or where number of trustees are reduced to the minimum in the case covered by Section 47, this Section gives out a speedy remedy so that the trust may not remain unworkable for a long period. If we go by the comparison of the provisions as contained in Sections 50, 50A and 51 of the Act, 1950, the proceedings under these sections may be of longer life than what it is there in Section 47 of the Act, 1950. Moreover, under Section 50 or 50A of the Act, 1950, the proceedings can only be taken where two or more

persons having interest in public trust make an application in the prescribed form to Charity Commissioner to frame, amalgamate or modify the scheme. Similarly, under Section 50 of the Act, 1950, suit is entertainable. Under Section 50 of the Act, 1950, suit can be filed by the Charity Commissioner or after making such inquiry as it deems fit and necessary or when two or more persons having an interest in the trust and having obtained consent in writing of the Charity Commissioner as provided under Section 51 of the Act, 1950, may institute a suit. In both these provisions, the proceedings are cumbersome and time consuming but as in those cases the trust will not stop functioning and the beneficiaries of the trust will get benefits that procedure is tolerable and acceptable. Such a cumbersome and time consuming remedy is if taken in a case where there is only a sole trustee who has become unfit or not available for administration of trust or where number of trustees is reduced to the minimum required, it will adversely affect the trust as well as its beneficiaries. The scheme of the Act has to be taken into consideration and not interest of the person in the trust which he is claiming. In the present case, if we go by the facts of the same, otherwise also, it is difficult to say that the proceedings initiated by petitioner are bonafide proceedings. It seems to be a malafide proceedings initiated by petitioner for his self and own considerations and benefits. He was nominated as a trustee by one of the trustee but other trustees have not accepted the agenda. The petitioner himself wanted to be a trustee of the trust and when other trustees have not accepted him he filed this application. The petitioner, if he was really a bonafide person what for he was accepting his nomination as a trustee of the trust. He could have filed appropriate application rather than to accept this nomination. If he would have been nominated and all other trustees would have accepted the same, naturally he would not have any complaint. But as other trustees have not accepted him he has come up with such an application and in the facts of the case otherwise also, this application could not have been entertained. The provisions of Section 47 of the Act, 1950, are meant for those persons who are interested in the trust and not for their own interest. So long as the trustees are accepting him as a trustee, everything goes well, good, and acceptable, but when it was not accepted then he has come up with all these allegations against those trustees. The learned court below has not committed any error whatsoever, much less a material irregularity in exercise of its jurisdiction in holding that the application filed by petitioner is not maintainable.

Otherwise also, this application is not entertainable as none of the conditions as provided for entertainability of the same under sub-section 2 of Section 47 of the act, 1950 are present in this case.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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